

Message Text

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LIMITED OFFICIAL USE SECTION 1 OF 2 LIMA 6841

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SUBJECT: PERU'S MUNICIPAL LAW

REF: LIMA 6803

1. ON JULY 28, 1978, THE GOP PROMULGATED A NEW LAW OF MUNICIPALITIES (D.L. 22250). THE LAW CONSISTS OF 5 TITLES WHICH GOVERN; (1) THE ORGANIZATION AND POWERS OF THE MUNICIPALITIES; (2) THE DUTIES AND FUNCTIONS OF THE MUNICIPALITIES; (3) THE FINANCIAL BASE; (4) MUNICIPAL PERSONNEL; AND (5) THE PROMOTION OF MUNICIPAL GOVERNMENTS. THE LAW WILL ENTER INTO FORCE AFTER MUNICIPAL ELECTIONS ARE HELD. THERE HAS BEEN NO SCHEDULE YET ANNOUNCED FOR MUNICIPAL ELECTIONS.

2. ORGANIZATION AND POWERS (TITLE 1): THE LAW PROVIDES FOR MUNICIPAL COUNCILS ON THREE LEVELS: (1) PROVINCIAL, (2) DISTRICT, AND (3) TOWNS, CAMPESINO COMMUNITIES AND NATIVE COMMUNITIES. THE FINAL LEVEL IS NEW: MUNICIPAL COUNCILS WILL BE ESTABLISHED AT THIS LEVEL WITH THE APPROVAL OF THE PROVINCIAL COUNCILS IF THE TOWN OR COMMUNITY MEETS REQUIREMENTS REGARDING SIZE, LOCATION AND ECONOMIC CAPACITY SPECIFIED IN THE MUNICIPAL LAW.

THE PROVINCIAL COUNCIL IS CHARGED WITH THE RESPONSIBILITY OF COORDINATING THE ACTIVITIES OF ALL MUNICIPAL COUNCILS WITHIN
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THE PROVINCE AND OF PASSING ON THEIR ACTS AND RESOLUTIONS IN CASES NOTED IN THE MUNICIPAL LAW (SUCH AS APPROVAL OF THE BUDGETS OF DISTRICT AND TOWN COUNCILS). THE DISTRICT COUNCILS WILL ELECT FROM THEIR MEMBERS THE ALDERMEN WHO WILL CONSTITUTE THE PROVINCIAL COUNCIL (THE NUMBER FROM EACH DISTRICT WILL BE BASED ON THE POPULATION OF THE DISTRICT). THE PROVINCIAL COUNCIL WILL IN TURN ELECT FROM ITS MEMBERSHIP THE PROVINCIAL MAYOR WHO WILL SERVE A

THREE YEAR TERM.

MEMBERS OF THE DISTRICT COUNCILS WILL BE ELECTED BY SECRET BALLOT. VOTING WILL BE OBLIGATORY AND DIRECT. FOREIGNERS CAN VOTE IF THEY ARE LITERATE IN SPANISH AND HAVE LIVED IN THE MUNICIPALITY FOR THE TWO YEARS PRECEDING THE ELECTION.

THE POWERS OF THE DISTRICT COUNCILS ARE ENUMERATED BY THE LAW OF THE MUNICIPALITIES. THEY INCLUDE:

1. PROMULGATING, MODIFYING AND MULTIPLYING MUNICIPAL ORDINANCES.
2. PROPOSING THE CREATION, MODIFICATION OR SUPPRESSION OF MUNICIPAL TAXES.
3. PARTICIPATING IN THE FIXING OF RATES FOR PUBLIC SERVICES.
4. APPROVING THE BUDGET PROPOSED BY THE MAYOR
5. AUTHORIZING THE CREATION OF MUNICIPAL BUSINESSES.
6. CONTRACTING LOANS AND ISSUING BONDS BACKED BY MUNICIPAL PROPERTY AND INCOME.

DISTRICT MAYORS HAVE BASIC EXECUTIVE POWERS: THE POWER TO GRANT AND REVOKE LICENSES; TO SUBMIT BILLS TO THE DISTRICT COUNCIL; TO HIRE AND FIRE MUNICIPAL EMPLOYEES; AND, TO CALL FOR BIDS ON MUNICIPAL PROJECTS. THE MUNICIPAL LAW ALSO PROVIDES THAT MAYORS WILL RECEIVE A SALARY IN MUNICIPAL DISTRICTS WHICH HAVE 50,000 OR MORE INHABITANTS. THE SALARY WILL BE SET BY THE MUNICIPAL ASSEMBLY. THE LAW PROHIBITS CERTAIN INDIVIDUALS FROM EXERCISING THE FUNCTIONS OF ALDERMAN OR MAHOR. THESE INCLUDE, AMONG OTHERS, MEMBERS OF THE LEGISLATURE, MINISTERS, MEMBERS OF THE ARMED FORCES OR POLICE FORCE WHO ARE ON ACTIVE DUTY, MEMBERS LIMITED OFFICIAL USE

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OF THE JUDICIARY INDIVIDUALS (OR LEGAL REPRESENTATIVES OR RELATIVES TO THE FOURTH DEGREE) WHO HAVE A FINANCIAL INTEREST IN MUNICIPAL ACTIVITIES, AND PERSONS CONVICTED OF MAJOR CRIMES.

3. MUNICIPAL FUNCTIONS (TITLE 2): MUNICIPALITIES ARE CHARGED WITH THE RESPONSIBILITY OF PROVIDING BASIC MUNICIPAL SERVICES - WATER, SEWAGE, PUBLIC LIGHTING, ETC. THEIR RESPONSIBILITIES, AS DELINEATED IN THE NEW LAW, IN REGARD TO SOCIAL WELFARE FUNCTIONS ARE BROAD. THEY INCLUDE, AMONG OTHER THINGS, STIMULATING TOURISM, MAINTAINING MUNICIPAL SCHOOLS AND LIBRARIES, AND ORGANIZING CULTURAL MISSIONS TO RURAL ZONES (CHAPTER 3). THE MUNICIPAL LAW ALSO PROVIDES THAT EVERY MUNICIPALITY OF GREATER THAN 5,000 INHABITANTS SHALL FORMULATE WITHIN THREE YEARS AFTER THE LAW ENTERS INTO FORCE, AN URBAN PLAN WHICH WILL DEAL WITH SUCH PROBLEMS AS TRANSPORTATION AND RATES AND AREAS OF FUTURE URBAN GROWTH (CHAPTER 4). MUNICIPALITIES ARE REQUIRED TO SUPERVISE THE MAINTENANCE OF PUBLIC BUILDINGS AND ROADS. THEY ARE ALSO REQUIRED TO REGULATE ALL CONSTRUCTION WHETHER PUBLIC OR PRIVATE NOT RELATED TO NATIONAL DEFENSE (CHAPTER 5). THE PROMOTION OF LOW-COST DWELLING IS ANOTHER RESPONSIBILITY OF MUNICIPALITIES DELINEATED IN THE NEW LAW (CHAPTER 6). THE NEW LAW PROVIDES THAT MUNICIPALITIES MAY CARRY OUT THE

RESPONSIBILITIES CHARGED TO THEM THROUGH ANY OF THE FOLLOWING
SYSTEMS (CHAPTER 7):

1. DIRECT ADMINISTRATION
 2. AUTONOMOUS MUNICIPAL BUSINESSES
 3. IN ASSOCIATION WITH LENDERS
 4. BUSINESSES WITH GOP, PRIVATE OR MUNICIPAL PARTICIPATION
 5. THROUGH CONCESSIONS.
- MUNICIPALITIES ARE ALSO GIVEN THE POWER TO EXPROPRIATE GOODS AND
TO MAKE SERVICES THE RESPONSIBILITY OF THE MUNICIPALITY IN THE
NAME OF THE COMMON INTEREST (CHAPTER 7).

4. MUNICIPAL FINANCING (TITLE 3): THIS TITLE DELINEATES SEVERAL
SOURCES OF REVENUE FOR ALL MUNICIPALITIES. THEY ARE:

1. INCOME FROM MUNICIPAL PROPERTY
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2. CHARGES FOR MUNICIPAL SERVICES
3. GIFTS TO THE MUNICIPALITY
4. MUNICIPAL TAXES
5. FINES

ONLY THE DISTRICT COUNCILS ARE GIVEN THE POWER TO TAX AND THE NEW
LAW STRICTLY DEFINES WHAT TAXES MAY BE LEVIED (CHAPTER 4).

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THEY ARE:

1. A PERSONAL PROPERTY TAX (BUSINESSES ARE EXCEPTED)
2. A TAX ON UNDEVELOPED LAND

3. A TAX ON THE OPENING OF INDUSTRIAL AND COMMERCIAL ESTABLISHMENTS

4. PATENT TAX

5. AN AUTOMOBILE TAX

6. MISCELLANEOUS TAXES ON THE EXPLOITATION AND COMMERCIALIZATION OF NATURAL RESOURCES.

THE IMPOSITION OF ANY OTHER TAX WOULD REQUIRE THE PROMULGATION OF A NEW MUNICIPAL LAW.

DISTRICT COUNCILS ARE ALSO REQUIRED TO FINANCIALLY SUPPORT PROVINCIAL COUNCILS: 5 PERCENT OF THEIR CURRENT OPERATING BUDGET MUST BE EARMARKED FOR THE PROVINCIAL COUNCIL; THEY MUST PAY FOR SERVICES RENDERED BY THE PROVINCIAL COUNCIL; THEY MUST PAY A SUM PROPORTIONATE TO THE BENEFIT THEY RECEIVE FROM GENERAL INVESTMENT PROJECTS (CHAPTER 2).

5. MUNICIPAL PERSONNEL (TITLE 4) TITLE 4 OF THE MUNICIPAL LAW REQUIRES MUNICIPAL COUNCILS TO ESTABLISH THE TECHNICAL AND ADMINISTRATIVE BODIES NECESSARY TO CARRY OUT THEIR RESPONSIBILITIES.

6. PROMOTION OF MUNICIPAL GOVERNMENT (TITLE 5); TITLE 5 PROVIDES FOR THE PROMOTION OF MUNICIPAL GOVERNMENTS THROUGH THE LIMITED OFFICIAL USE

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ESTABLISHMENT OF A NATIONAL INSTITUTE FOR MUNICIPAL PROMOTION (CHAPTER 1), THE CREATION OF A SYSTEM OF MUNICIPAL BANKS (CHAPTER 2), AND THE HOLDING OF MUNICIPAL CONGRESSES ON A REGIONAL OR NATIONAL LEVEL (CHAPTER 3). OF THE THREE INSTITUTIONS, THE MUNICIPAL BANKING SYSTEM COULD HAVE THE GREATEST IMPACT. THE MUNICIPAL LAW PROVIDES THAT FIVE OR MORE PROVINCIAL COUNCILS MAY ASK THE SUPERINTENDENT OF BANKING FOR PERMISSION TO ESTABLISH A REGIONAL MUNICIPAL BANK. ONCE THE BANK IS ESTABLISHED, ALL MUNICIPAL COUNCILS WITHIN THE BANK'S TERRITORIAL LIMITS WILL BE REQUIRED TO USE THE BANK'S SERVICES.

7. COMMENT: THERE ARE SEVERAL MAJOR CHANGES IN THE NEW MUNICIPAL LAW, WHICH REPLACES THAT OF 1892. MAYORS OF MUNICIPALITIES WHICH HAVE A POPULATION GREATER THAN 50,000 NOW WILL RECEIVE SALARIES. DISTRICT COUNCILS HAVE A LIMITED POWER OF TAXATION; UNDER THE 1892 LAW THEY DID NOT. TOWNS AND CAMPESINO COMMUNITIES CAN NOW ESTABLISH A MUNICIPAL COUNCIL WITH THE APPROVAL OF THE PROVINCIAL COUNCIL. THE CREATION OF A FRAMEWORK FOR A MUNICIPAL BANKING SYSTEM IS AN INNOVATION. DESPITE THE GRANT OF TAXING POWERS TO DISTRICT COUNCILS, IT REMAINS TO BE SEEN WHETHER THESE COUNCILS WILL IN FACT HAVE THE FINANCIAL RESOURCES TO MAKE AN IMPACT ON THE LOCAL LEVEL.

THE PROMULGATION OF THIS LAW IS ANOTHER EXAMPLE OF THE GOP'S COMPLIANCE WITH THE PLAN TUPAC AMARU WHICH CALLED FOR NEW LEGISLATION ON LOCAL GOVERNMENT.

8. THE REACTION OF THE CONSTITUENT ASSEMBLY TO THE GOP'S NEW

LAW OF MUNICIPALITIES WAS ONE OF CONCERN. THE PRESIDENT OF THE
CONSTITUENT ASSEMBLY, HAYA DE LA TORRE, HAD PREVIOUSLY ANNOUNCED
THAT THE ASSEMBLY WOULD DRAFT A MUNICIPAL LAW AND CONVOKE
MUNICIPAL ELECTIONS. BECAUSE OF THE ASSEMBLY'S STATED INTENTION
TO WRITE A MUNICIPAL LAW, IT IS PROBABLE THAT ASSEMBLY MEMBERS
WILL CLOSELY SCRUTINIZE THE GOP LAW.
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IF ASSEMBLY MEMBERS HAVE MAJOR PROBLEMS WITH THE EW LAW, IT MAY
BECOME A SUBJECT OF DISPUTE BETWEEN THE GOP AND THE CONSTITUENT
ASSEMBLY (PARA 12, REFTEL). ACCION POPULAR (AP) APPEARS KEENLY
INTERESTED IN CAMPAIGNING IN MUNICIPAL ELECTIONS. AP'S SECRETARY
GENERAL TERMED THE GOP DECREE INOPPORTUNE AND UNPOPULAR. AL-
THOUGH AP IS NOT REPRESENTED IN THE ASSEMBLY, ITS SPOKESMAN IN-
SIST THAT THE ASSEMBLY AND THE GOP SHOULD DRAFT THE NEW MUNICIPAL
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